

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

EDWARD EUGENE YOUNG

v.

C.A. No. 03 - 220 S

A.T. WALL, et al.

Memorandum and Order

Jacob Hagopian, Senior United States Magistrate Judge

Edward Eugene Young (“Young” or “plaintiff”), an inmate legally incarcerated at the Rhode Island Department of Corrections (“RIDOC”), Adult Correctional Institutions, filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983 alleging a violation of his constitutional rights. The plaintiff named as a defendant A.T. Wall and sued him in both his official and individual capacities. Counsel then entered their appearance on behalf of the *pro se* plaintiff and filed a Second Amended Complaint. The Second Amended Complaint, however, failed to cite 42 U.S.C. § 1983 as the basis for plaintiff’s relief and failed to identify that plaintiff was suing Wall in both his official and individual capacities. Accordingly, plaintiff, through counsel, has now moved to file a Third Amended Complaint to cure these deficiencies.

Defendant Wall has objected to the motion. In his objection, Wall contends that the amendment would be futile. In support of this contention, Wall asserts that he is protected by the doctrine of qualified immunity. Be that as it may, the Court is more apt to deal with such issues when considering the parties pending motions for summary judgment. Indeed, Wall argues in his memorandum in support of his motion for summary judgment that he is protected by qualified immunity. Moreover, it is clear from the plaintiff’s *pro se* complaint that he intended to sue Wall pursuant to 42 U.S.C. § 1983 in both his official and individual capacity. The Court will not fault

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the plaintiff for his lawyers' missteps, where, as here, it is clear the plaintiff intended to sue Wall in his individual and official capacities. Furthermore, no prejudice has been shown by the defendant.

Accordingly, plaintiff's motion to file a Third Amended Complaint is **GRANTED**. The plaintiff shall file the Third Amended Complaint within five days. Within five days thereafter, the defendant shall file a Third Amended Answer to include any and all defenses to the instant 42 U.S.C. § 1983 action.

IT IS SO ORDERED.



Jacob Hagopian
Senior United States Magistrate Judge
Date: *8 Nov 05*